

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

LARRY A. EVANS,

Petitioner,

v.

CIVIL ACTION NO. 3:03-2250

THOMAS McBRIDE, Warden,

Respondent.

ORDER

Pending before the Court is Respondent's Objections to Magistrate's Proposed Findings and Recommendation (docket no. 16). The Court **DENIES** Respondent's Objections since none of the challenged claims were included in Petitioner's amended petition and **ADOPTS** Magistrate Judge Taylor's findings of fact and recommendation.

In the November 15, 2006 findings and recommendations, Magistrate Taylor listed claims that were exhausted and claims that were not exhausted in Petitioner's habeas corpus petition under 28 U.S.C. § 2254. Respondent argued that some of the claims included by Magistrate Taylor as being exhausted had not actually been exhausted. As per Magistrate Taylor's recommendation, Petitioner submitted an amended habeas corpus petition that only included exhausted claims. Petitioner did not include any of the challenged claims listed in Respondent's Objections.


The amended petition includes eleven claims, all of which were in the original petition, found to be exhausted by Magistrate Taylor and not challenged by Respondent. The amended petition includes: three claims regarding the use of evidence in the trial, originally stated as claims A-C in the first ground, and titled the same in the amended petition; six claims alleging ineffective

assistance of counsel, originally listed as claims A-F in the second ground and grouped as the third ground in the amended petition; and two claims alleging prosecutor misconduct, originally listed as claims A-B in the third ground, now listed as claims A-B in the second ground. Respondent shall file his answer or response to these claims.

Pursuant to Petitioner's response to Magistrate Taylor's findings and recommendation of November 15, 2006, this matter is referred to the Honorable Maurice G. Taylor, Jr., who shall consider the pleadings and evidence therein and submit to this Court his proposed findings of fact and recommendation for disposition.

Therefore, the Objections by Respondent are **DENIED**, Magistrate Judge Taylor's findings of fact and recommendation is **ADOPTED** and the amended petition is **REFERRED** to Magistrate Taylor. The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: December 11, 2006

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE